IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 659 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

SHANTILAL D RATHOD

Appearance:

1. Special Civil Application No. 659 of 2001

MR SAURABH J MEHTA for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/06/2004

ORAL JUDGEMENT

1. The Corporation has challenged the judgment and award of the Industrial Tribunal, Rajkot dated 28th

March, 2000 passed in Reference (ITR) No.264 of 1989 and Reference (ITR) No. 225 of 1990, whereby Reference No. (ITR) No. 264 of 1989 has been partly allowed; whereas the other Reference has been dismissed. The Tribunal by this award has modified the penalty imposed upon the respondent and has reduced it from stoppage of three increments with permanent effect to one increment with permanent effect.

2. The facts in short can be stated as under :-

2.1. The respondent, on the relevant date, was discharging duty as Conductor and it was found that he had permitted several passengers to travel without issuing tickets and without collecting fare from them. In view thereof, he was proceeded against departmentally and on conclusion of the inquiry, the allegation levelled against him was found to be true. The Disciplinary Authority, therefore, imposed the punishment of stoppage of three increments with permanent effect which was disputed by the respondent and ultimately the dispute came to be referred to the Industrial Tribunal for adjudication.

2.2. Before the Tribunal it was averred by the respondent that the concerned passengers after boarding the bus did not purchase tickets on the ground that they were members of the staff of the petitioner and they had passes for free travelling in the bus. It was further averred that when they were asked to show passes, he was told that the passes would be shown after reaching the destination, since they were lying in the baggage carried by them. In the meanwhile the checking squad checked the bus. It appears from the record that the statements of these persons were recorded by the checking squad and they had deposed that because of some misunderstanding the tickets were not purchased by them. According to them, respondent was not at all at fault. These averments were contested by the petitioner.

3. The Tribunal, after considering the material produced before it, came to the conclusion that in the facts and circumstances of the case, the penalty imposed by the department was quite harsh and it was required to be reduced. In view thereof, the aforesaid award was passed.

4. Mr. S.J. Mehta, learned advocate appearing for the petitioner has submitted that the respondent was in the habit of allowing the passengers to travel without ticket and without collecting fare from them. According

to him, the default card of the respondent showed that he had committed 10 such defaults in the past. He has, therefore, submitted that the punishment imposed by the Disciplinary Authority was just and proper and there was no need for the Tribunal to interfere with the same.

4.1. As against that, Mr. M.H. Rathod, learned advocate appearing for the respondent has submitted that this is not a case of defalcation of the amount. Further the concerned passengers have also given statements to the effect that the respondent was not at all at fault. In view of this, the lenient view taken by the Tribunal cannot be disturbed.

5. Having gone through the record of the petition and having considered the rival submissions, it is clear that the respondent was discharging duty on the relevant date as Conductor in the bus and upon the checking squad inspecting the bus, it was found that six adults and three children were travelling without tickets and no fare was collected from them. The defence of the respondent was that they had not purchased the tickets on the ground that they were members of the staff and they had free passes which they had promised to show to him at the destination. This story has not been believed by the department and, therefore, he has been charge-sheeted. However, the fact remains that the checking squad had recorded statements of the concerned passengers and they have categorically stated that it was due to misunderstanding on their part the tickets were not purchased when the checking squad arrived. It is also their say that the respondent was not at all at fault. In view thereof together with the fact that even the past record shows that the respondent did not indulge into any malpractice or defalcation of the amount, the Tribunal was justified in taking lenient view in the matter on the quantum of punishment. When the discretion has been exercised by the Tribunal, it is difficult for me under Article 227 of the Constitution of India, to reappreciate the entire material on record and come to a different conclusion even on the quantum of punishment. Further considering the record, it appears that the view taken by the Tribunal cannot be termed as perverse or per se illegal and, therefore, the order passed by it altering the punishment is just, legal and proper and it is not required to be disturbed. This petition has, therefore, no merit and it is dismissed. Rule discharged with no order as to costs. Interim relief, if granted, stands vacated.

[AKSHAY H. MEHTA, J.]

* Pansala.